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## U.S. Equal Employment Opportunity Commission v. Jesohn, Inc., d/b/a Coffee & Inc.

Judge Helen G. Berrigan

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## U.S. Equal Employment Opportunity Commission v. Jesohn, Inc., d/b/a Coffee & Inc.

### Keywords

EEOC, Jesohn Inc., Coffee &, 05-1845, Consent Decree, Disparate Treatment, Sex, Female, Service, Title VII, Employment Law

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

LORETTA G. WHYTE  
CLERK

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Plaintiff,

V.

JESOHN, INC., D/B/A COFFEE &, Inc.

Defendant

\*\*\*\*\*

CIVIL ACTION NO:05-1845

SECTION C

MAGISTRATE 4

CONSENT DECREE

The Plaintiff, Equal Employment Opportunity Commission (the "Commission"), instituted the captioned civil action in the United States District Court for the Eastern District of Louisiana, charging Jesohn, Inc., d/b/a Coffee &, Inc. ("Coffee &" or "Defendant"), with violations of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and alleging that Defendant discriminated against Stacy Stein and a class of similarly-situated females, including Kelly Sarrio, because of their sex (female/pregnancy) and;

Defendant answered the Commission's Complaint and denied all the allegations. The parties have resolved this matter. The Charge of Discrimination, as amended, filed by Stacy Stein has been resolved by and through the Settlement Agreement and Mutual Release of all Claims as well as the entry of this Consent Decree ("Decree"). In order to avoid the costs of litigation, and as a result of having engaged in extensive negotiations, the parties have agreed that

Fee \_\_\_\_\_  
Process \_\_\_\_\_  
☒ Dktd \_\_\_\_\_  
☒ CtRmDep \_\_\_\_\_  
Doc. No. \_\_\_\_\_

this action should be finally resolved by entry of this Consent Decree.

The parties stipulate to the jurisdiction of the Court and waive a hearing and the entry of findings of fact and conclusions of law.

This Consent Decree is entered in full and complete settlement of any and all claims arising out of or contained in EEOC Charge No. 270-2004-00728, and Civil Action No. 05-1845. The Consent Decree constitutes a complete resolution of all claims that were made or could have been made by the Commission against Defendant in this action.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

INJUNCTIVE RELIEF

1. Defendant Jesohn, Inc., d/b/a Coffee &, Inc., its officers, agents, employees, and all persons acting in concert with the Defendant shall not engage in any employment practice which has the purpose or effect of discriminating against any individual on the basis of pregnancy or any pregnancy related condition as prohibited by Title VII of the Civil Rights Act of 1964, as amended.
2. Defendant is permanently enjoined from making employment decisions on the basis of gender.
3. Defendant is permanently enjoined from discriminating against and/or harassing any employee on the basis of pregnancy.
4. Defendant is permanently enjoined from restricting pregnant employees from working as required by Title VII of the Civil Rights Act of 1964, as amended.
5. Defendant is permanently enjoined from discriminating or retaliating in any manner against any individual because he or she has made a charge, testified, assisted, or participated in

any manner in the investigation by the Commission or court proceeding in connection with this case.

#### INDIVIDUAL RELIEF

- A. Defendant shall pay Stacy Stein a total of twenty-five thousand dollars (\$25,000.00) to be allocated in the following manner: Three-thousand seven hundred dollars (\$3700.00) as back wages; Twenty-one thousand, three hundred dollars (\$21,300.00) as compensatory damages to be paid within thirty (30) days after entry of this Decree by the Court. Defendant will issue a United States Revenue Service Form 1099 to Stacy Stein for the amount of compensatory damages.
- B. Defendant will forward a copy of the check issued to Stacy Stein to the EEOC, New Orleans Field Office, attention: Lillian Thornton.
- C. Also, within (30) days of the entry of this Consent Decree, Defendant shall tender to Kelly Sarrio the sum of one thousand dollars (\$1000.00) as damages, in exchange for a full release of all claims arising under the charge. Defendant further agrees to forward a copy of the check to EEOC, New Orleans Field Office, attention: Lillian Thornton.

#### COMPLAINT PROCEDURES

- A. Complaint Procedures. Defendant shall maintain a complaint procedure that is designed to encourage employees to come forward with complaints regarding sex discrimination and/or pregnancy discrimination and retaliation regardless of the position held by the alleged harasser. Defendant's complaint procedure shall provide the following: (i) simple, convenient, confidential and reliable mechanisms for reporting incidents of sex discrimination and/or pregnancy discrimination; (ii) prompt investigation of complaints of sex discrimination and/or

sex discrimination and/or pregnancy discrimination and/or retaliation; (iii) written findings of the results of any investigation of a sex discrimination and/or pregnancy discrimination complaint and the remedial actions proposed, if any; (iv) an effective means of promptly communicating to the complaining party, in writing, the results of the investigation and the remedial actions taken or proposed, or not taken; (v) appropriate remedial action to resolve the complaint and to deter future incidents of sex discrimination and/or pregnancy discrimination and/or retaliation; (vi) assurances that complainants shall not be subjected to intimidation, harassment and/or retaliation; and (vii) it shall be impermissible retaliatory conduct to take any form of adverse action against someone who makes a complaint of employment discrimination, including but not limited to those specified, so long as the person who makes the complaint does so in good faith from that person's perspective and (viii) the name and telephone number of the EEOC's Field Office. Defendant shall report compliance under this section.

B. Defendant shall forward all verbal and/or written complaints of sex discrimination and/or pregnancy discrimination and retaliation complaints to the Commission within five (5) to seven (7) business days of receiving them. Defendant shall report compliance under this section.

C. Defendant agrees to keep all records of pregnancy discrimination complaints made by employees under Title VII for the three (3) year effective period of this Decree and agrees to provide the EEOC, every six (6) months, with a written report setting forth all complaints of pregnancy discrimination at its facilities. The reports should set forth an explanation of the investigation and disposition of such complaints, and should have attached all documentation pertaining to each complaint, its investigation, and its disposition.

### **ANTI-DISCRIMINATORY POLICY**

Defendant agrees to implement, distribute and enforce an effective written policy and procedure for preventing and investigating complaints of pregnancy discrimination. Defendant also agrees to ensure that the Defendant's owners and management staff, particularly its managers and supervisors, have received a copy of the policy. Defendant shall provide to the Commission, within thirty (30) days of the entry of this Decree, a copy of the policy. The policy must, at a minimum, contain the following elements: A clear explanation of prohibited conduct; assurance that employees who make complaints of sex discrimination and/or pregnancy discrimination or provide information related to such complaints will be protected against retaliation; a clearly described complaint process that provides accessible avenues of complaint; assurance that the employer will protect the confidentiality of sexual harassment complaints to the extent possible; a complaint process that provides a prompt, thorough, and impartial investigation, and assurance that the Defendant will take immediate and appropriate corrective action when it determines that discrimination has occurred. This policy, once created, will be distributed to all of Defendant's employees and management staff, and shall be included in any relevant policy or employee manuals kept by Defendant's business. The policy will also be posted in a conspicuous and accessible place for all employees and printed in a font that is easily legible (at least 12 point font). This policy will be consistent with law and the Commission's regulations and guidances.

### **PREGNANCY POLICY**

Defendant's Pregnancy Policy is made a part of this document as follows and as an attachment Exhibit "A":

## **MATERNITY LEAVE POLICY**

Coffee & recognizes and respects a woman's right to continue to work while she is pregnant. Coffee & also recognizes a woman's right to take maternity leave for the birth of a child. Coffee & will never impose adverse terms and conditions of employment on an employee because she is working while pregnant or has decided to take or not take maternity leave. These rights are provided by both state and federal law. This company provides for Family and Medical Leave based on medical documentation. Our policy includes pregnancy as a disability that is provided for under the Family and Medical Leave Act. We acknowledge, though, that an ordinary pregnancy is not considered to be a disability as regards protections provided by another law, the Americans with Disabilities Act (ADA).

Coffee & does not encourage its employees to take Maternity Leave if they do not want to and Coffee & certainly never will require an employee to take a Maternity Leave when that employee learns she is pregnant. If an employee decides that she needs Maternity Leave, the employee should, where possible, give as much notice of the anticipated start date of the leave. The length of the Maternity Leave is governed by state and/or federal law and may vary depending on the difficulty associated with the birth. As per the Company's Family and Medical Leave Policy, if the employee has accrued paid leave, the employee must use paid leave (e.g. annual or sick leave) first as part of the maternity leave and take the remainder as unpaid leave. Any questions concerning this policy should go to the Company's Human Resources Director at 504-366-6434.

Company policy prohibits retaliation against any person who continues at work after becoming pregnant. Company policy also prohibits retaliation against any person who requests or



takes maternity leave under this policy. The company's general policy of opposing discriminatory employment practices is contained in a poster that is placed in each of our stores. If you are not able to locate that poster, please immediately inform the Company's Human Resource Office. The Policy will be posted in a conspicuous and accessible place for all employees and printed in a font that is easily legible (at least 11 point font).

### **TRAINING**

- A. Defendant will provide extensive training, semi-annually, to all of its current managers, manager-trainees, supervisors, and owners on compliance with Title VII of the Civil Rights Act of 1964, as amended, and specifically pregnancy discrimination and its prohibitions for the duration of this Consent Decree; and
- B. Specifically, Defendant will train its managers and supervisors and owners on their responsibility to adhere to the prohibitions of pregnancy discrimination as defined by Title VII of the Civil Rights Act of 1964, as amended, against subjecting its employees to all forms of acts of harassment which are designed to force an employee to resign or retire from their position because of pregnancy.
- C. Defendant shall notify the Commission about each training session prior to its commencement. The notice shall indicate the time, place and date of the training.

### **POSTING REQUIREMENT**

Within fourteen (14) business days after entry of this Decree, Defendant shall post copies of the Notice attached as Exhibit "B" to this Decree at all its Louisiana facilities in conspicuous locations easily accessible to and commonly frequented by employees. The Notice

shall remain posted for the duration of this Decree. Defendant shall ensure that the postings are not altered, defaced or covered by any other material. Defendant shall certify to the EEOC in writing within Fourteen (14) business days after entry of the Decree that the Notices have been properly posted. Defendant shall permit a representative of EEOC to enter its premises for purposes of verifying compliance with this Paragraph at any time during normal business hours.

### **REPORTING REQUIREMENTS**

The Defendant shall prepare a report within three months of the signing of this Decree that shall contain the following provisions:

- a. Copies of all checks disbursed under this Decree and verification that the checks have cleared.
- b. Notification that the training of its managers and owners has taken place or is scheduled to take place per section C of the "Training" provision of this decree.
- c. Notification of whether or not the Defendant has received any complaints of discrimination per sections "B" and "C" of the "Complaint Procedures" provision of this decree.

### **CONSENT DECREE ENFORCEMENT**

- A. In the event that Defendant fails to perform its obligations herein, Plaintiff, EEOC is empowered to enforce this Consent Decree through the applicable judicial enforcement procedures and to seek sanctions which may be due as a result of the need to enforce this Decree.
- B. Any attempt by the Defendant to recoup any part of money paid out to any party under this agreement shall be a violation of this Decree and subject to appropriate sanctions by the Court.
- C. Should any provision of this Decree be declared or be determined by any Court to be

illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Decree.

D. This Decree sets forth the entire agreement between the Commission and Defendant as to captioned lawsuit, and fully supercedes any and all prior agreements or understandings between the Commission and Defendant pertaining to the subject matter herein.

E. The Commission and the Defendant will bear their own attorney's fees and costs incurred in connection with the litigation of this case.

F. This Decree shall remain in effect for a period of three (3) years from the date of its execution. The Commission shall have six (6) months from the end of the effective period of this Decree to commence enforcement actions relative to any violation hereof by Defendant. Defendant agrees to post a Notice to Employees regarding the resolution of this suit for the three (3) year term of this Consent Decree. The Notice to Employees is attached hereto as Exhibit B.

G. This Court shall retain jurisdiction of this action for purposes of enforcing this Decree, as appropriate.

**IT IS SO ORDERED.**

THUS DONE AND SIGNED, New Orleans, Louisiana

this 1<sup>st</sup> day of September, 2006.



**UNITED STATES DISTRICT JUDGE**

APPROVED AS TO FORM AND CONTENT:  
FOR THE PLAINTIFF:

FOR THE PLAINTIFF:



**JAMES SACHER**  
Regional Attorney  
U. S. Equal Employment Opportunity  
Commission



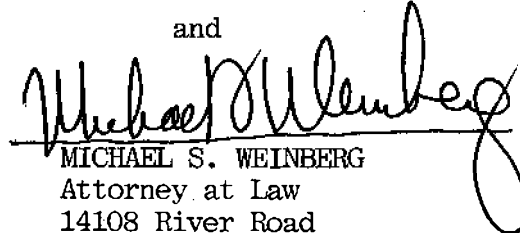
**LILLIAN M. THORNTON**  
Senior Trial Attorney  
Bar Roll No. 25525  
**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**  
New Orleans Field Office  
1555 Poydras St., Suite 1900  
New Orleans, Louisiana 70112  
Telephone (504) 589-6817  
Date:

FOR THE DEFENDANT



**MICHAEL T. TUSA, JR. (#02154)**  
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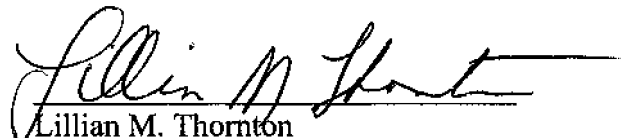
and



**MICHAEL S. WEINBERG**  
Attorney at Law  
14108 River Road  
Destrehan, Louisiana 70047  
Telephone: (985) 764-8709  
Facsimile: (985) 764-8739

# CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Approve the Consent Decree has been served upon all counsel of record by depositing same in U.S. mail, postage prepaid, this 27<sup>th</sup> day of August, 2006.

  
Lillian M. Thornton

## **EXHIBIT A**

### **MATERNITY LEAVE POLICY**

Coffee & recognizes and respects a woman's right to continue to work while she is pregnant. Coffee & also recognizes a woman's right to take maternity leave for the birth of a child. Coffee & will never impose adverse terms and conditions of employment on an employee because she is working while pregnant or has decided to take or not take maternity leave. These rights are provided by both state and federal law. This company provides for Family and Medical Leave based on medical documentation. Our policy includes pregnancy as a disability that is provided for under the Family and Medical Leave Act. We acknowledge, though, that an ordinary pregnancy is not considered to be a disability as regards protections provided by another law, the Americans with Disabilities Act (ADA). Coffee & does not encourage its employees to take Maternity Leave if they do not want to and Coffee & certainly never will require an employee to take a Maternity Leave when that employee learns she is pregnant. If an employee decides that she needs Maternity Leave, the employee should, where possible, give as much notice of the anticipated start date of the leave. The length of the Maternity Leave is governed by state and/or federal law and may vary depending on the difficulty associated with the birth. As per the Company's Family and Medical Leave Policy, if the employee has accrued paid leave, the employee must use paid leave (e.g. annual or sick leave) first as part of the maternity leave and take the remainder as unpaid leave. Any questions concerning this policy should go to the Company's Human Resources Director at 504-366-6434.

Company policy prohibits retaliation against any person who continues at work after becoming pregnant. Company policy also prohibits retaliation against any person who requests or takes maternity leave under this policy. The company's general policy of opposing discriminatory employment practices is contained in a poster that is placed in each of our stores. If you are not able to locate that poster, please immediately inform the Company's Human Resource Office. The Policy will be posted in a conspicuous and accessible place for all employees and printed in a font that is easily legible (at least 11 point font).

# EMPLOYEE NOTICE

Posted Pursuant to an Agreement between  
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
New Orleans Field Office and COFFEE &, INC.

This Notice to all employees of COFFEE &, INC. of is being posted as part of a mutually agreed settlement between Coffee &, Inc. and the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC).

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (40 or over) or disability with respect to compensation, hiring, promotion, firing, or other terms, conditions or privileges of employment.

Coffee &, Inc. supports and will comply with such Federal law in all respects and will not take any action against present or former employees and applicants because they have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission, or protesting practices made illegal under the law.

Coffee &, Inc. will not retaliate against employees, because they have filed charges of discrimination, by providing adverse job references to prospective employers that the applicant had filed charges of discrimination with the Equal Employment Opportunity Commission.

This Notice will remain posted for one year from the date of signature by directions of the Equal Employment Opportunity Commission.

Signed this \_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
For: COFFEE &, INC.

Questions concerning this notice may be addressed to:  
Equal Employment Opportunity Commission  
1555 Poydras Street, Suite 1900  
New Orleans, LA 70112  
Telephone (504) 589-2329

*Multiple original  
signed & posted at  
each location.  
MSW*